

MAY 25 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. <u>93-54</u>
GAF BROADCASTING COMPANY, INC.	)	File No. BRH-910201WL
For Renewal of License of Station	)	
WNCN(FM) (104.3 MHz), New York,	)	
New York	)	
CLASS ENTERTAINMENT AND	)	
COMMUNICATIONS, L.P.	)	File No. BPH-910430ME
THE FIDELIO GROUP, INC.	)	File No. BPH-910502MQ
For a Construction Permit for a	)	
New FM Station on 104.3 MHz at	)	
New York, New York	)	

To: Administrative Law Judge  
Joseph Chachkin

MASS MEDIA BUREAU'S COMMENTS ON MOTION TO DISMISS

1. On April 26, 1993, GAF Broadcasting Company, Inc. ("GAF"), filed a motion to dismiss the application of The Fidelio Group, Inc. ("Fidelio"). The Mass Media Bureau submits the following comments on Fidelio's motion.

2. GAF's motion is premised on Fidelio's failure to comply with two specific requirements of the Hearing Designation Order, 8 FCC Rcd 1742 (ASD. 1993) ("HDO"). Specifically, Fidelio failed to file an amendment containing a statement from an antenna manufacturer, certifying that it would be able to construct an antenna able to provide omnidirectional service in the "relatively unusual" arrangement proposed by Fidelio. See HDO at

No. of Copies rec'd  
List A B C D E

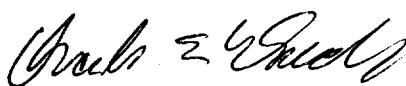
*216*

paragraphs 17 and 48. Additionally, GAF notes that Fidelio failed to file the environmental assessment required by paragraphs 23 and 47 of the HDO. GAF argues that since Fidelio failed to even address its noncompliance with the HDO and because the materials which Fidelio failed to file relate to Fidelio's basic qualifications, dismissal is warranted.


3. Absent a satisfactory explanation by Fidelio the Bureau supports GAF's motion. Although Fidelio filed a Notice of Appearance and an April 12, 1993, Motion to Defer Procedural Dates, thereby demonstrating an apparent interest in participating in the proceeding, Fidelio has failed to file anything since. Its inaction and failure to comply with specific orders in the HDO appear to suggest that Fidelio is no longer interested in remaining in the proceeding. However, we do not agree that Fidelio's failures are equivalent to those evident in

4. Based on the foregoing, the Bureau supports GAF's motion, absent a satisfactory explanation by Fidelio.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
Norman Goldstein

  
Gary P. Schonman  
Attorneys  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554  
(202) 632-6402

May 5, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch,  
Mass Media Bureau, certify that I have, on this 5th day of May  
1993, sent by First Class mail, U.S. Government frank, copies of  
the foregoing **"Mass Media Bureau's Comments on Motions to  
Dismiss"** to:

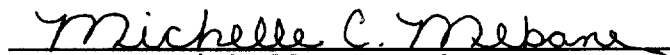
Harry F. Cole, Esq.  
Bechtel & Cole  
1901 L Street, N.W.  
Suite 250  
Washington, D.C. 20036  
Counsel for The Fidelio Group, Inc.

Christopher G. Wood, Esq.  
Fleischman & Walsh  
1400 16th Street, N.W.  
Suite 600  
Washington, D.C. 20036  
Co-counsel for GAF Broadcasting Co., Inc.

John T. Scott, III, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Co-counsel for GAF Broadcasting Co., Inc.

Morton L. Berfield, Esq.  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036  
Counsel for Class Entertainment and  
Communications, L.P.

David M. Rice, Esq.  
One Old Country Road  
Carle Place, New York 11514  
Counsel for Listeners' Guild, Inc.

  
Michelle C. Mebane